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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 397

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS' UNION, ET AL.,
Appellants,

v.

DENVER MILK PRODUCERS, INC., HAROLD HENNIGH, E. W. JOHNSON, ET AL.

On Appeal from the Supreme Court
of the State of Colorado

BRIEF FOR APPELLANTS

J. ALBERT WOLL,
HERBERT S. THATCHER,
736 Bowen Building,
Washington 5, D. C.
PHILIP HORNBEIN,
PHILIP HORNBEIN, JR.,
620 Symes Building,
Denver 2, Colorado,
Counsel for Appellants.

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BRIEF FOR APPELLANTS

Opinions Below

The opinion of the Supreme Court of the State of Colorado (R. 273-312), is reported under the name of *Denver Milk Producers, Inc., et al. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers' Union, et al.*, 183 P. 2d 539. It is not yet officially reported.

Jurisdiction

The federal questions here presented were properly raised and preserved and were passed upon by the courts

below (R. 267-268, 315-316, 317-321, 322-324). The judgment of the Supreme Court of Colorado was entered on May 19, 1947 (R. 272-273). Appellants' petition for rehearing was denied on July 7, 1947 (R. 316). The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended, 28 U.S.C.A. 344. On November 10, 1947, this Court noted probable jurisdiction (R. 325-326).

Question Presented

The question presented is whether, pursuant to a state statute which defines "labor dispute" to encompass only controversies between an employer and persons directly employed by him, a state court may constitutionally:

I. Enjoin union members employed in the same industry, who regard the competition of non-union establishments as "unfair," from (A) publishing their views to the public and fellow union members either through peaceful picketing at such establishments and at retail stores which sell goods produced and serviced by non-unionists, or through any other means, and (B) refusing themselves to cross such picket lines or to work upon goods produced and serviced by non-unionists.

II. Hold the Union and its members liable in damages for economic injury resulting to the non-union establishments from such conduct.

Statute Involved

Pertinent provisions of the Colorado Labor Peace Act, Session Laws, 1943, p. 417; Colorado Stat. Ann. (1946 Cum. Supp.), Chap. 97, Sec. 94, are as follows:

> *Section 2. Definitions.*
> (7) The term "labor dispute" means any controversy between an employer and such of his employees as are organized in a collective bargaining unit, concerning the rights or process or details of collective

bargaining. The entering into of a contract for an "all-union agreement" or the refusal of an employer to enter into an "all-union agreement" shall not constitute a labor dispute. It shall not be a labor dispute where the disputants do not stand in the proximate relation of employer and employee . . .

(11) The term "secondary boycott" shall include causing or threatening to cause, and combining or conspiring to cause or threaten to cause, injury to one not a party to the particular labor dispute, to aid which such boycott is initiated or continued, whether by (a) withholding patronage, labor, or other beneficial business intercourse; (b) picketing; (c) refusing to handle, install, use or work on particular materials, equipment or supplies, or (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another or to compel the party with whom such labor dispute exists to comply with any particular demands.

(14) No controversy between an employer and his employees shall constitute a labor dispute until after a bargaining unit, in accordance with this act is created and a dispute arises between the bargaining unit and the employer.

(15) No labor dispute shall arise from the refusal of an employer to join a union or to cease work in his own business.

Section 4. Rights of Employees.

In accordance with the provisions of this act, employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own free choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees and each of them shall also have the right to refrain from any or all of such activities . . .

Section 6. What are unfair labor practices.

(2) It shall be an unfair labor practice for an employee individually or in concert with others:

(a) To coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in Section 4 . . .

(e) To cooperate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed, have voted by secret ballot to call a strike.

(g) To engage in a secondary boycott, or to hinder or prevent, by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, equipment, or services, or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services.

Section 7. What are not unfair Labor Practices.

(1) It is not an unfair labor practice for any employer to refuse to grant a closed shop or all-union agreement or to accede to any proposal therefor, as herein provided.

(2) The right of both employer and employee freely to express, declare and publish their respective views and proposals concerning any labor relationship shall not be abrogated or limited by this act, nor shall the exercise of such right constitute an unfair labor practice. No strike shall be lawful unless it is authorized by a majority vote of the employees in the union involved taken by secret ballot such as is provided in this act.

Section 8. Prevention of Unfair Labor Practices.

(1) . . . nothing herein shall prevent the pursuit of equitable or legal relief in courts of competent jurisdiction . . .

Section 16. Except as otherwise provided in this act no court, nor any judge or judges thereof shall have jurisdiction to issue in any case involving or growing out of a labor dispute, as herein defined, any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert, any of the following acts:

(1) Ceasing to perform any work or to remain in any relation of employment regardless of any prom-

ise, undertaking, contract or agreement to do such work or to remain in such employment;

(2) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 17 of this act;

(3) Paying or giving to, or withholding from any person any strike or unemployment benefits or insurance or other moneys or things of value;

(4) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit in any court of this State;

(5) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(6) Ceasing as an organization to patronize any person with which such organization has a labor dispute or to employ any person or persons;

(7) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

(8) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified;

(9) Agreeing with other persons to do or not to do any of the acts heretofore specified;

(10) Advising, urging, or inducing without fraud, violence or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 17 of this Act.

(11) Doing in concert of any or all of the acts heretofore specified on the ground that the persons engaged therein constitute an unlawful combination or conspiracy.

Section 24. Construction of this Act.

Except as specifically provided in this Act, nothing herein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this

act be so construed as unlawfully to invade the right to freedom of speech . . .

STATEMENT

This case arises out of a controversy over the conditions under which milk is distributed, processed and sold to retailers in the Denver, Colorado, area.

Farmer-producers in the Denver milkshed are organized in a cooperative marketing association, Denver Milk Producers, Inc., hereafter referred to as the Association (R. 2-3, 17, 115-118, 129). The Association, which operates pursuant to the Cooperative Marketing Law of Colorado (4 Colorado Stat. Ann., Chap. 106), controls the distribution and sale of 98% of the milk and dairy products consumed in the Denver area (R. 3, 116-117). The Association charges farmer-producers one cent per pound butterfat for all milk handled by it (R. 116, 129).

Milk is collected from the farms and delivered to designated Denver dairies for processing by trucks operated by employees of various independent carriers (R. 3, 12, 19, 22-23, 66, 71, 76, 92, 98-99). Where more than one carrier is available in a particular farm territory the choice of carriers is left to the individual farmer-producers (R. 19, 45). Drivers employed by some of the carriers are members of Local No. 537, Milk Drivers' and Dairy Employees' Union, International Brotherhood of Teamsters, affiliated with the American Federation of Labor, hereinafter called the Union; drivers employed by other carriers are not (R. 77-78, 86, 87, 88, 99, 123, 161).

Although the Association retains ultimate power to determine the particular dairy to which a farmer-producer's milk is to be delivered, the choice is, in most cases, left to the farmer-producers themselves (R. 14, 45, 80, 113). Employees of some of the dairies are members of the Union; employees of others are not (R. 23, 45, 52, 68, 93, 97-98).

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After the milk is processed by the dairies it is delivered by employees of the dairies, in large part, to retail stores for distribution to the consuming public (R. 222-223, 97).

In July, 1945, the Union embarked upon a campaign to organize the non-union employees of the carriers who delivered milk from the farms to the dairies and the non-union employees of the dairies themselves (R. 28, 22, 33, 36, 111, 137, 141, 150). Union representatives and members proselytized among these employees, pointing out the advantages of unionization, and sought to persuade them to join the Union (*ibid.*). Many joined, and some employers signed contracts with the Union (R. 63, 99-100, 123, 150, 151). A large number of drivers and dairy employees, however, persistently refused to join the Union, stating, among other reasons therefor, that they could observe no economic benefit to be derived from union membership and did not wish to pay dues (R. 21, 22, 26, 29, 31, 33-34, 68, 69, 83, 89, 90, 160). At the same time the Beach Milk Company, a non-union dairy, was asked to recognize and enter into contractual relations with the Union (R. 102, 103-104, 133-135). The Company refused to do so, asserting, *inter alia*, that if it recognized and dealt with the Union it would forfeit the good will of farmer-producers who were hostile to the Union and who would refuse to sell their milk to the dairy (R. 106, 113, 134; cf. 64, 68, 94, 96, 124-127, 130).

Viewing the continued distribution and processing of milk under non-union conditions as a threat to union standards, the union members thereupon determined to refuse further to aid the perpetuation of those conditions. Beginning on or about September 6, 1945, union drivers refused to deliver milk to non-union dairies (R. 99, 123, 162). Union dairies were advised that union members employed by them would refuse to unload or process milk delivered to the dairy by drivers who were not members of the Union (R. 12-14, 17, 42, 53, 55). Both union and non-union dairies were peacefully picketed by single union representatives

who paraded in front of the plants (R. 158-160, 135, 138, 145, 17, 27, 33, 37, 44, 53, 62, 81, 121). At non-union dairies the pickets carried signs reading "Unfair to Local 537" (R. 135, 159, 62). When a driver approached a union dairy he was asked by the picket if he had a union card; if not, he was quietly asked to join the Union. Upon his refusal he was told that his milk would not be processed by the employees at the plant, and, if he persisted in approaching the dock, the union employees refused to unload or handle the milk (R. 16, 17, 19-20, 42, 46, 53, 66-67, 68, 71, 81, 93, 94, 145, 147). When a non-union driver approached a non-union dairy he was likewise solicited to join the Union, but upon his refusal no effort was made to prevent him from unloading his milk (R. 25-26, 27, 28, 35-37, 81, 84, 87, 112, 145).

These activities resulted in readjustment by the Association of the pattern of milk distribution. Milk which had formerly been delivered to non-union dairies by union drivers was consigned instead to union dairies, and milk formerly delivered by non-union drivers to union dairies was delivered to non-union dairies (R. 14, 71, 80, 85, 93, 95, 120, 121, 123, 170).

Because a greater volume of milk was handled by non-union than by union drivers, this readjustment resulted in an increase in the amount of milk processed by non-union dairies and a decline in the amount of milk processed by union dairies (R. 44, 85-86, 123-124). Under these circumstances it became apparent to the union members that their only hope of success lay in the possibility of enlisting the support of retailers or of members of the consuming public, who, by refraining from purchasing milk delivered and processed by non-unionists, could put an end to the system which threatened the very existence of the Union and of the employment standards which it sought to maintain.

Therefore, to initiate this program, on or about September 19, 1945, union representatives called upon Mr.

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E. H. Lambotte, President of the Piggly-Wiggly Stores Company, and upon the owners and managers of several Piggly-Wiggly Stores in Denver, the major retail outlet for products of the above mentioned Beach Milk Company, one of the non-union dairies (R. 37-38, 50, 51, 52, 121, 154, 157). The union representatives sought to enlist their support and asked Mr. Lambotte and the managers of the stores to refrain from purchasing milk from the Beach Milk Company (R. 39, 42, 50, 51, 52, 58, 59, 73-74, 75, 76). Mr. Lambotte and the managers were further advised that unless they refrained from purchasing Beach milk the Union would be compelled to picket the stores with signs requesting the public to refrain from purchasing the Beach products sold therein, and to request the retail clerks employed by the stores to refrain from handling and selling Beach products (R. 37-40, 41, 50, 51, 59-60, 60-61, 73-74, 75, 76, 103-104).[1] On or about September 20, 1945, Mr. Lambotte called the Beach Milk Company and advised that Company that the Piggly-Wiggly Stores would thereafter not accept delivery of Beach milk (R. 40).

On September 12, 1945, the Association, several farmer-producers, and two carriers employing non-union drivers, all appellees herein, filed complaints for damages and injunctive relief against appellants, the Local Union; Harold Coffee, as Secretary thereof, and personally; Earl Christol, as Business Agent thereof, and personally; Daniel J. Tobin, as President of the International Brotherhood of Teamsters, and personally; Dave Beck, as officer and organizer for the International, and personally; A. E. O'Neal, as organizer for the International, and personally; C. W. Davis, Berthel R. Peterson, and Robert Gillis, employees of Carlson-Frick Company, a union dairy, as union members and personally; and against A. B. Parker, Ray

[1] The record shows that the retail clerks employed by some of the Piggly-Wiggly Stores are members of the Retail Clerks' Union, Local No. 9, affiliated with the American Federation of Labor (R. 40-41, 51, 59, 74-75).

Cerva and Henry Oetzel, employees of Beatrice Creamery Company, as union members and personally (R. 1-11, 238-242, 242-247, 247-251). The complaints alleged that the defendants had "entered into a conspiracy and agreement to prevent the delivery, processing and sale of milk and dairy products from the Farmer-Producer to the ultimate consumer in Denver and the Denver Milk-shed by any concern or party except by members of Union No. 537 and other Unions whose members handle milk in connection with sales of other food" (R. 5, 239, 243, 248). The complaints further alleged that no "labor dispute" was involved, as that term is defined under Colorado law; and that the conduct of the defendant Union in picketing and thereby interfering with the delivery of milk by union drivers to non-union dairies, and the conduct of the defendant union members employed by union dairies in refusing to handle and process milk delivered by non-union drivers was therefore unlawful under the common law, and under the statutes of Colorado which declare it to be an unfair labor practice for employees, *inter alia*, to engage in a "secondary boycott," or to combine or conspire to "hinder or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services" (R. 5-6, 7-8, 239-241, 244-245, 248-250).

The Association alleged in its complaint that it had suffered, and would continue to suffer, irreparable financial loss as a result of the above specified conduct of the defendants, in that such conduct resulted in a substantial decrease in the volume of milk handled by it and a consequent decline in commissions (R. 8-9). The farmer-producers who were complainants in Cause No. 45091 (R. 238-239) alleged that the conduct of the defendants made it impossible for them to continue to ship milk via Austin Bros. Truck Line, a non-union carrier, to the Carlson-Frick Dairy, a union dairy; that this dairy alone among Denver dairies participated in a so-called "Golden Guernsey Program"

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and paid premium prices for plaintiff's milk (R. 238-241); that because plaintiffs refused to ship via union carriers they were compelled to sell their milk to dairies other than Carlson-Frick at a lower price than they could otherwise have obtained (R. 240-241). The farmer-producer who was complainant in Cause No. 45112 alleged that the conduct of defendants injured him in that it interfered with his freedom of choice as between union and non-union carriers (R. 247, 249-250). The non-union carriers who were complainants in No. 45106 (R. 242-243) alleged that the defendants' conduct had injured them by precluding them from delivering milk to union dairies, and by coercing their customers to cease doing business with them and to do business instead with union carriers (R. 244-245).

The plaintiffs requested the court to enjoin the defendants from "in any manner interfering with the delivery of milk by the Farmer-Producers or [the Association] to the Carriers, and by the Carriers and their Drivers to the Denver Dairies," and from refusing to handle milk delivered by non-union carriers (R. 9-10, 241, 246, 250). In addition, each complaint prayed for damages (R. 10, 241-242, 247, 250).

On September 21, 1945, the Beach Milk Company filed a complaint against the same defendants (excepting the employees of the Carlson-Frick Company and Beatrice Creamery Company), seeking damages and an injunction to compel defendants to cease and desist from picketing the premises of the Company; interfering with the farmer-producers who consign their milk to the Company and with carriers and their drivers who pick up, haul and deliver milk to the Company; from picketing the Piggly-Wiggly or any other stores against the products of the Company; from soliciting customers of the Company to cease doing business with it; from compelling the Company to sign a contract of any kind with the defendants or any of them; and from in any manner coercing the em-

ployees of this Company to join any of the defendant unions (R. 251, 262). The complaint alleged, *inter alia*, that defendants had picketed the docks of plaintiff and thus prevented union drivers from delivering milk to plaintiff (R. 257); that defendants had requested plaintiff to enter into a union-shop contract (R. 257-258); that plaintiff's employees are not members of the Union and are not engaged in a dispute with plaintiff (R. 261); that plaintiff pays higher wages than the union scale and that "if the Union contract were signed by the Company, its employees stand to lose, out of said wages, the initiation fees and dues paid to Local No. 537 without any increased pay to cover the same" (R. 260); and that the "agreement proposed by the Unions would require plaintiff to do an unlawful act and compel its employees to join the Union or lose their positions, and that such agreement would be a violation of the Labor Peace Act and the common law of Colorado" (R. 260). The complaint further alleged that "by the picketing of the Company against non-union Carriers and non-union drivers the defendants are attempting to coerce it to put into effect a secondary boycott against said Carriers and non-union drivers to force them to sign agreements with and join Local No. 537, all of which is illegal under the Laws of Colorado" (R. 261).

Pursuant to this complaint, the District Court, on September 21, 1945, issued *ex parte*, a temporary restraining order (R. 263-264), enjoining the defendants from:

> "1. In any manner establishing and maintaining a secondary boycott against the products of Beach Milk Co., at any of the Piggly Wiggly Stores in Denver, Arvada and Aurora, Colorado, or at any other store in Colorado which purchases the products of the Company for resale to its customers.
>
> "2. In any manner establishing and maintaining pickets against or about the products of the Beach Milk Co., and against said Beach Milk Co. at or about any of said stores, and in any manner publishing it as unfair to union labor to the customers of said stores,

and in any manner preventing the delivery of the products of said Company to said stores.

"3. In any manner interfering with the delivery of the products of the Company to said Piggly Wiggly or other stores.

"4. In any manner, as members of Retail Clerks Union No. 7, American Federation of Labor, refusing to handle and sell the products of said Company, when delivered at the Piggly Wiggly or other stores which purchased the said products prior to September 20, 1945."

The court recited that the injunction was intended to protect Beach Milk Company from the loss of the business of the Piggly-Wiggly Stores; that the injunction was necessary because of the plaintiff's inability to find customers to replace Piggly-Wiggly, and that, unless issued, plaintiff's business would be destroyed (R. 263-264). The court further noted that the injunction was issued under "the allegations of the complaint that the defendants seek to coerce the Plaintiff to sign an unlawful contract" (R. 263-264).

Upon issuance of the restraining order it was agreed by and between all the parties that the order should extend to each of the other cases (R. 274-275, 285). Pursuant to this agreement, and the extension of the order issued in the Beach case to the other four cases (*ibid.*), appellants withdrew their request that the Piggly-Wiggly Stores refrain from purchasing Beach milk; withdrew the pickets from non-union dairies; delivered milk to non-union dairies; and unloaded and processed milk delivered by non-union drivers at union dairies (R. 14, 17, 20, 40).

The five cases were consolidated for hearing before the District Court on the question whether the plaintiffs were entitled to injunctive relief as prayed in the complaint (R. 237, 171, 285). It was further stipulated that in the event the restraining order was made a permanent injunction, the question of amount of damages should be tried separately in each case (*ibid.*). Defendants moved to dis-

solve the injunctions and to dismiss the complaints in all five cases on the ground that their conduct complained of was protected by the First, Thirteenth and Fourteenth Amendments to the Constitution (R. 267-268, 131).

After hearing evidence on all the complaints in the consolidated hearing, the District Court disposed of the five cases in a single opinion "because the law involved governs the general factual situation existing in all of the cases" (R. 171). It analyzed the conduct of appellants complained of in each of the five cases and found that "the purpose of the defendants was to organize the dairies and truck lines serving the milk industry in Denver, in order to secure to workers in that industry the benefits of collective bargaining, with respect to betterment of wages, hours of work, and other terms and conditions of employment" (R. 215). The court further found that this purpose "to urge employer and employees to join a union" (R. 186) "was lawful" and had not been rendered illegal by the Colorado statute (R. 215). The court also found that the means utilized by appellants to accomplish this purpose, i.e., picketing and the refusal of union members to work on or handle goods produced or serviced by non-unionists, were accompanied by "no violence, intimidation, threats or other unlawful conduct but only peaceful persuasion" (*ibid.*). The court therefore found that "the means were lawful" (*ibid.*)

The court stated, however, that under Section 6(2)(e) and (g) of the Colorado Labor Peace Act, the acts engaged in and contemplated by appellants are declared to be unfair labor practices, and are, as such, enjoinable unless they occur in a case arising out of a labor dispute as defined in Section 2(7) of that Act (R. 186, 188). The court further found that since no labor dispute existed between the non-union carriers and their drivers, or between the union carriers and their drivers, and no labor dispute existed between the non-union dairies and their employees,

or between the union dairies and their employees, the picketing of dairies, the refusals to work on non-union milk, and refusals to deliver to non-union dairies did not arise out of a "labor dispute" within the meaning of the Colorado Act which provides that "It shall not be a labor dispute where the disputants do not stand in the proximate relation of employer and employee" (*ibid.*).

The court concluded that the plaintiffs' right to the relief they requested turned upon the question whether a State could constitutionally, merely because "there exists no employer-employee relationship," enjoin a union from picketing and its members from refusing to handle non-union goods, where the purpose is to induce employees to join the union and to induce employers to recognize and bargain with the union (R. 186, 188). The court held that a state could not constitutionally, as Colorado here attempted to do, confine lawful "labor disputes" to situations "where an employer-employee relationship exists" and where "the majority of the employees of a particular employer [are] participants" (R. 215-216). It held that to enjoin appellants from picketing, from refusing to process milk delivered by non-members of the Union, and from refusing to deliver milk to dairies employing non-members of the Union would constitute "an invasion of their constitutional rights" (R. 216).

The court then turned to the specific question presented in the Beach Milk case (R. 217):

> "Could the union peaceably picket the Piggly-Wiggly Stores, and if they had would this not have constituted a secondary boycott?"

It held that "there was such unity of interest between the Beach Milk Company and the Piggly-Wiggly Stores that the actions of the Union did not constitute a threat to establish a secondary boycott" (R. 218).

As to all five cases the court concluded that "the objectives of the defendants and the means pursued to obtain those objectives were lawful, and that to hold otherwise would invade the constitutional rights of the defendants." If therefore dissolved the temporary injunction and granted the motion of the defendants "in each and all of the five cases" to dismiss the complaints (R. 218, 219, 242, 247, 251, 265).

The Supreme Court of Colorado reversed (R. 273-312). As had the trial court, it adopted the view that all five cases arose out of a single controversy and presented an identical legal question, and that complainants were entitled to the relief they requested if the restrictive definition of "labor dispute" contained in the Colorado Labor Peace Act was valid (R. 285, 294-295). The Supreme Court did not reverse any of the trial court's findings of fact. It did not find that in any of the cases the objectives appellants sought to attain were made unlawful by the statute. It did not find that appellants had utilized violence, intimidation or threats in pursuit of those objectives (cf. R. 306-307). It held merely that the State of Colorado could constitutionally limit lawful "labor disputes" to controversies arising out of the proximate relation of employment and could properly prohibit picketing and refusals to work on non-union products which did not involve persons standing in such a relationship (R. 285-289, 294-297). The court found that appellants' conduct did not involve or grow out of a "labor dispute" within the meaning of the Colorado law, because appellants did not stand in a proximate relation of employment with the employers who were seeking relief and because the issue in dispute was unionization (R. 285-295, 305-306).

The court explained the basis for its holding as follows (R. 295-296):

> "In the absence of any statute on the subject there is no restriction on the courts in granting restrain-

ing orders or injunctions in any case. It is only in cases involving 'labor disputes' that the court does not have jurisdiction to grant such orders. The statute does not take away any rights from defendants, but bestows upon them additional rights in 'labor disputes' not theretofore possessed. It creates a defense in labor disputes against actions for restraining orders and injunctions not permitted in other disputes. The gist of the defendants' argument is that the statute is void and unconstitutional because it is not more generous. The same argument could be advanced against the Workmen's Compensation Act of Colorado because it allows fourteen dollars a week for temporary total disability instead of awarding a larger sum. There is no constitutional right to have an act passed by the legislature divesting courts of jurisdiction in specific cases and no one has a constitutional right to a repeal of said act. The legislature created the defense and by the same token can take it away. If the act is held invalid, as defendants ask, the statutory defenses permitted in labor disputes would be eliminated and such controversies controlled by the general rules of this court as in other cases. That is not what the defendants really want. They seek to have the definition, 'labor dispute,' so liberalized as to include a larger field wherein no injunction may issue. Naturally we have no power or authority to legislate upon the subject and such arguments should be addressed to the general assembly and not to this court."

The court concluded that the Colorado Labor Peace Act, "in so far as applicable here, is in all respects constitutional, valid and enforceable, . . . that there is no merit to the contentions of the defendants in error that their constitutional rights under the First, Thirteenth and Fourteenth Amendments to the Federal Constitution will be violated if the injunction is made permanent" (R. 305). The court ordered that the restraining order be made permanent[2] and remanded the cases to the District Court "for

[2] The restraining order had remained in effect at all times after issuance as a result of successive stays of execution ordered by the District Court (R. 88, 237).

further proceedings with respect to damages and otherwise as may be necessary, such proceedings to be in harmony with the views herein expressed" (R. 306).

Two justices dissented from the decision of the court upholding the complainants' right to relief against the picketing of dairies, the refusal to deliver milk to non-union dairies, and the refusal to process milk delivered by non-union drivers (R. 306-312). The dissenting justices pointed out that the provision in Section 6(2)(e) of the Labor Peace Act which declares it to be an unfair labor practice for employees "to cooperate in engaging in or inducing picketing" should be read in conjunction with Section 7(2) of that Act which purports to preserve free speech in labor matters, and should therefore be construed to apply to picketing "in its coercive, and not its persuasive, sense" (R. 308-309). So construed, the justices noted "there is no actional claim, nor ground for injunction resulting either from the so-called picketing at the union creameries or from the picketing at the Beach plant" (R. 309). The justices further intimated that a contrary construction of the statute would face constitutional objections (R. 308, 309-310).

The Justices concurred, however, in the court's holding that the threatened picketing of the Piggly-Wiggly Stores was a violation of the Labor Peace Act and could constitutionally be enjoined (R. 310-312). They indicated that because the "sale of milk" by the Piggly-Wiggly Stores "was a very minor part" of their grocery business, these stores were strangers to the issue between appellants and appellees. They read *Carpenters & Joiners Union v. Ritter's Cafe*, 315 U. S. 722, as holding that a state could, therefore, constitutionally insulate such retail stores from the conflict over the unionization of the milk industry (R. 311-312).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that where employees are not participants in a labor dispute as defined by state law they have no

right under the Constitution of the United States peacefully to picket or in any manner to publish their views.

2. In holding that where employees are not participants in a labor dispute as defined by state law they have no right under the Constitution of the United States peacefully to refuse to perform work or render services.

3. In holding that a State may constitutionally declare that labor disputes can lawfully arise only between an employer and persons directly employed by him.

4. In holding that a State may constitutionally declare that labor disputes can lawfully arise only between an employer and a majority of his employees organized in a "collective bargaining unit" as defined by state law.

5. In holding that a State may constitutionally declare that a dispute concerning unionization between union employees on one side, and non-union employees and their employers on the other, where all the disputants are engaged in the same industry, is not a "labor dispute."

6. In holding that a State may constitutionally prohibit union members who are engaged in such a dispute from peacefully picketing goods produced or serviced by non-unionists, from refusing to work on such goods, and from refusing to furnish and deliver materials for processing by non-unionists.

7. In holding that a State may constitutionally prohibit union members who are engaged in such a dispute from peacefully picketing goods produced and delivered by non-unionists at the store of a retailer who distributes such goods to the public, or in any manner publishing their views concerning such goods.

8. In holding that a State may constitutionally prohibit employees of retailers who distribute goods produced by non-unionists from refusing to work on or handle such goods.

9. In holding that Sections 4, 6(2)(a), 6(2)(e), 6(2)(g), and Sections 8(1), 16 and 2(7), of the Colorado Labor Peace Act, as here applied, are constitutional and do not deprive appellants of rights guaranteed by the First, Thirteenth and Fourteenth Amendments.

10. In holding that appellants are liable for damages suffered by appellees as a result of the picketing of dairies, the publishing that non-union dairies are "unfair," the refusal of union drivers to deliver milk to non-union dairies, the refusal of union members to work on milk delivered by non-union drivers, and the threatened picketing of Piggly-Wiggly Stores.

11. In ordering that the restraining order, enjoining appellants from engaging in such conduct, be made permanent.

12. In refusing to dismiss the complaints against appellants.

SUMMARY OF ARGUMENT

I

Under the uniform holdings of this Court, peaceful picketing may neither be enjoined nor made unlawful merely because of the absence of a proximate relation of employment between the pickets and the employer, where the issue in dispute is unionization. In holding that the peaceful picketing in the instant case was unlawful and enjoinable under the Colorado Labor Peace Act because it did not arise out of a "labor dispute" as defined in that Act, the Supreme Court of Colorado ignored both the holdings of this Court and the guiding principles of constitutional interpretation therein established.

By enjoining appellants from picketing union and non-union dairies because they sought to inform the public of

the facts of their dispute with non-union milk drivers and with the carriers which employ them, and of their dispute with non-union employees in the milk processing industry and the dairies which employ them, Colorado has denied to the public opportunity to become informed of the facts regarding unionization in the dairy industry and has thereby denied to the public the opportunity to acquire information essential to the exercise of its power of correcting error. Against this interest of the public to be informed concerning the conditions of unionization in the dairy industry, the state poses no countervailing interest. Colorado has precluded public discussion of unionization by union non-employees solely because it desires to shelter the interest of industrial concerns and non-union employees from the economic repercussions which would follow if members of the public were persuaded to refrain from patronizing them. Such interests, under the uniform holdings of this Court, do not justify limitations upon the exercise of freedom of speech.

By enjoining employees engaged in the dairy industry from informing their fellow workers of the dispute regarding unionization therein, Colorado has denied freedom of speech on a subject of vital economic importance to the very persons whose economic interests are most closely affected. This ban cannot be justified by reference to the economic repercussions upon the picketed enterprise and its employees. The economic consequences which flow from exercise of civil rights cannot be dubbed "coercive" and thereby made illegal and enjoinable without subverting the civil rights themselves.

Colorado here has banned not only picketing but every expression of views regarding the issue of unionization in the dairy industry. So sweeping a prohibition cannot conceivably stand.

II

The judgment below violates the Thirteenth Amendment because it requires individual employees, who are engaged in a dispute concerning unionization, to perform work and render services, without their consent, for the benefit of private employers who are their adversaries in the dispute. No state can in this manner compel an individual to serve another private individual whom he does not wish to serve.

The judgment below also violates the Thirteenth and Fourteenth Amendments by declaring that it is unlawful for employees in the dairy industry in concert to withhold their labor and services for the purpose of extending unionization in the industry, and by enjoining them from doing so. The Thirteenth Amendment necessarily guarantees the right of workingmen to withhold their labor, in concert as well as singly, for the purpose of protesting either oppressive working conditions or an inferior bargaining position which leaves them without adequate power to redress working conditions which they believe unfair or oppressive. The Thirteenth Amendment becomes a mockery if it protects only the right of individual employees to change employers, for this Court has recognized that individual employees are helpless to better their conditions by that method alone. The right of workingmen to act in concert through unions for the betterment of their economic life is inherent in and essential to effectuation of the policy which the Thirteenth Amendment decrees. Concerted withholding of labor by employees for the purpose of protecting the existence of their labor organizations, and preserving their standards of wages, hours and working conditions, is protected not only under the Thirteenth Amendment but under the liberty clauses of the Fifth and Fourteenth Amendments as well. Both federal and state courts have recognized this principle. Within the confines of a labor dispute as defined by this Court, the rights peacefully to strike, to picket and to boycott are inviolable in the absence at least of a reasonable apprehension of imminent danger to organized government.

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III

The picketing of Beach products at the Piggly-Wiggly Stores, which was enjoined in this case, arose and grew out of a labor dispute as that concept has been defined for constitutional purposes by this Court. The Piggly-Wiggly Stores were in community of interest with the Beach Milk Company and with the non-union drivers who delivered milk to Beach. They were not strangers to the issue.

Moreover, only by picketing at the Piggly-Wiggly Stores could the union inform the public of its dispute with Beach and with the non-union drivers, for these stores constituted the only nexus between the public and the parties engaged in the dispute.

ARGUMENT

I

THE FOURTEENTH AMENDMENT PRECLUDES THE STATES FROM IMPOSING RESTRAINTS UPON PEACEFUL PICKETING BY PERSONS WHO ARE INTERESTED IN A DISPUTE CONCERNING UNIONIZATION.

Once again this Court has before it a case in which a state court was "led into error by assuming that if a controversy does not come within the scope of state legislation limiting the issuance of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined." *Cafeteria Employees Union v. Angelos*, 320 U. S. 293, 295-296. Once again a State Supreme Court has demonstrated its concern "only with the question whether there was involved a labor dispute within the meaning of the [state] statutes and assumed that the legality of the injunction followed from a determination that such a dispute was not involved." *Bakery & Pastry Drivers, etc. v. Wohl*, 315 U. S. 769, 774. Once again this Court is "asked to sustain a decree which for purposes

of this case asserts . . . that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him." *American Federation of Labor v. Swing*, 312 U. S. 321, 325.

The opinion of the Supreme Court of Colorado on its face discloses that that court construed the Colorado Labor Peace Act as making illegal and enjoinable all peaceful picketing which does not involve or grow out of a "labor dispute" as defined in that Act. The opinion further discloses that the court held that the picketing in the instant case did not involve a "labor dispute" within the definition of the Colorado statute because no proximate relation of employment existed between the picketers and the non-union employees and employers, and that it did not grow out of a "labor dispute" because the issue which gave rise to it was unionization, rather than an issue "concerning the rights or process or details of collective bargaining" (R. 289). It is clear, however, from the court's decision, that the judgment would have been the same even if the dispute had concerned wages or hours rather than unionization, provided only that, as here, the controversy did not arise between an employer and his own employees.

Once again, therefore, there is occasion for application of the rule of the *Swing* case, 312 U.S., at 326, that:

> "The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Steel Foundries* v. *Tri-City*

> *Central Trades Council*, 257 U.S. 184. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred by concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' *Senn* v. *Tile Layers Protective Union*, 301 U.S. 468."

Since, in the opinion of the Supreme Court of Colorado, the state law illegalized *all* picketing which did not arise out of a "labor dispute," that court did not rely for its finding of illegality upon Section 6(2)(e) of the Colorado Labor Peace Act which declares that

> "It shall be an unfair labor practice for an employee individually or in concert with others . . . to cooperate in engaging in . . . picketing . . . unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed, have voted by secret ballot to call a strike."[3]

It is clear, however, that even if it had been relied upon, this provision of the Act could not support the judgment below. Assuredly, if the state cannot constitutionally prohibit picketing where none of the employees of the immediate employer are involved because of its notions "regarding the wise limits of an injunction in an industrial dispute," it cannot constitutionally prohibit picketing because of its notion that unless a majority of the employer's own employees are involved, peaceful picketing is an "unfair labor practice."

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[3] The dissenting judges argued that "picketing" as used in this section should not be construed to include the peaceful picketing here engaged in, both because of the provisions of Section 7(2) and Section 24 of the Colorado Labor Peace Act, and because such a construction would infringe appellants' constitutional rights.

The dispute which gave rise to the picketing of the non-union dairies and carriers in the instant case was precisely the same as that which gave rise to the picketing of the beauty parlor in the *Swing* case. There (312 U.S., at 323), "A union engaged in what the record describes as beauty work unsuccessfully tried to unionize Swing's beauty parlor. Picketing of the shop followed. To enjoin this interference with his business and with the freedom of his workers not to join a union, Swing and his employees began the present suit." Here, the Union, engaged in transportation and processing of milk and milk products, attempted unsuccessfully to unionize the Beach Milk Company and other non-union dairies, as well as non-union carriers such as Austin Brothers and Borgmann Brothers. Picketing of the dairies and carriers followed. To enjoin this interference with their business and with the privilege of their workers not to join a union, the carriers and dairies and the farmer-producers who support them brought these suits.

Their suits were sustained by the state court because, apparently, in its view, the state legislature's concern for the privilege of employees not to join a union and for the business interests of the employers against whom appellants were seeking to enlist public opinion outweighed appellants' interest in the communication of facts which they deem vital to their interests. If the right to free communication guaranteed by the Fourteenth Amendment is not to be mutilated, that prohibition cannot be permitted to stand.

A. Unionization Is a Matter of Public Concern; No State Can Constitutionally Withdraw from the Public the Right To Be Informed of Issues Arising Therefrom.

Thornhill's case, 310 U.S. 88, 103-104, teaches that:

> "In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion

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> that is guaranteed by the Constitution. . . . It is recognized now that satisfactory hours and wages and working conditions in industry *and a bargaining position which makes these possible* have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing . . . labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger problem." (Italics added.)

In this case, as in *Swing's*, the State has denied to the public the opportunity to be informed concerning the progress of workingmen's efforts to achieve a bargaining position which alone can assure satisfactory hours and wages and working conditions. Colorado has thus adopted the very view which in *Thornhill's* case this Court held it to be beyond the power of a State to adopt, i.e., that the efforts of workingmen to achieve a bargaining position commensurate with that of employers cannot give rise to an issue of concern to the public. (Colorado Labor Peace Act, Section 6(2) (e), cf. R. 288-289.)

The method by which Colorado has arrived at that conclusion differs in no essential from the method utilized to prohibit free expression by Illinois in the *Swing* case and by New York in the *Wohl* case. Colorado does not deny that disputes over wages and hours and the details of collective bargaining between an employer and a labor organization representing a majority of his employees may give rise to issues of concern to the public. These disputes it

terms "labor disputes," and, where such disputes are involved, Colorado withholds from its courts the power to interfere with the effective communication to the public of the employees' side of the dispute by peaceful picketing of the employer's business. But Colorado has by fiat declared, as the opinion of the court below shows (R. 289), that disputes over unionization are not disputes arising out of conditions of work, even if a majority of an employer's employees are involved, and are therefore not "labor disputes" in which the public is concerned. It has further declared that even disputes concerning wages and hours and details of collective bargaining are not "labor disputes," of concern to the public, if only non-employees are involved. Such declarations, charitably viewed, are based, as Mr. Justice Brandeis put it, "upon a misconception of the facts." *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 488, 489.[4]

This misconception led the Colorado legislature to declare, and the Supreme Court of Colorado in the instant case to hold, that the effective communication to the public of one

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[4] Compare the statement of the Supreme Court of Oregon in *American Federation of Labor* v. *Bain*, 165 Ore. 183, 106 P. (2d) 544, concerning a similar attempt by the legislature of that State to illegalize peaceful picketing by distorting beyond recognition the definition of "labor dispute":

> "No claim is made by the proponents of the present statute that in defining the term, 'labor dispute,' it was intended to declare that an actual labor dispute could not lawfully exist unless the majority of employees of a particular employer were participants. Such a construction would result in imputing to the people a purpose to ignore actualities. Counsel for the defendants agree with the view of the court below that the definition of a labor dispute in the statute is 'merely a draftsman's device for shortening the phraseology of the act' by describing the class of cases to which the prohibition on picketing does not apply. In this construction we concur. Thus, there remains a wide field of labor controversies in which picketing is declared to be unlawful. Hence, there is no room for a contention—and none has been made—that the *Thornhill* and *Carlson* cases are not controlling, because the Supreme Court limited its decisions to the right to publicize the facts of a labor dispute. The prohibitions of the statute under review clearly include picketing in *bona fide* labor controversies."

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side of a dispute concerning unionization by peaceful picketing of non-union establishments and products is unlawful and enjoinable. The identical misconception led the New York courts in the *Wohl* case to declare that a dispute concerning unionization between bakery drivers who were union members and non-union drivers who owned their own trucks was not a "labor dispute." The same misconception led the Illinois courts in the *Swing* case to declare that a dispute concerning unionization between members of a beauticians' union on the one hand, and the non-union employees of a beauty parlor and its owner on the other, was not a "labor dispute."

Because "it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality" (*Milk Wagon Drivers* v. *Meadowmoor Dairies*, 312 U.S. 287, 293), no state can be permitted to decide that disputes concerning unionization are not matters of public concern or that non-employees cannot bring issues of wages, hours or unionization involving a particular business enterprise before the public. And, although the issue is not directly involved in this case, we believe it is essential to point out that it is immaterial whether a state seeks to ban free discussion of disputes concerning unionization by non-employees through the device used here of declaring that these are not "labor disputes," or by the device, utilized in the *Wohl* case (315 U.S., at 773-775), of declaring that the extension of unionization through the aid of public opinion is an "unlawful objective."

Appellants were enjoined from picketing in the instant case because they sought to inform the public of the facts of their dispute with non-union milk drivers and the carriers which employ them, and of their dispute with non-union employees in the milk processing industry and the dairies which employ them. They were enjoined from picketing because they sought thereby to enlist the support

of public opinion for their side of the dispute. But Colorado has not made it unlawful for non-union employees to join the Union; nor has Colorado made it unlawful for appellants to persuade them to do so. This, clearly, Colorado could not constitutionally do. *Thomas* v. *Collins*, 323 U.S. 516. It is no less unconstitutional for Colorado to preclude appellants from advising the public of the dispute between them and non-unionists and from seeking to enlist public support for their side of the question than it would be for Colorado to preclude appellants from proselytizing among non-unionists altogether.

By denying to the public opportunity to become informed, through picketing, of the facts about wages, hours or the bargaining position of employees in particular enterprises, the state denies to its citizens the opportunity to participate effectively in the political and economic processes which shape the destiny of our society. Just as a barrier to free discussion of political issues would unfit citizens for intelligent participation in political life, so a barrier to free discussion of economic issues unfits citizens for intelligent participation in both economic and political life. If the public may not be informed through picketing that goods and services which are offered them in the market place are produced under non-union conditions which they believe to be detrimental to their own interests as well as to the interests of unionized employees, purchasers will be unable to determine whether, by their purchases, they are inadvertently assisting in the perpetuation of conditions of employment of which they disapprove. No legislature can, by abridging freedom of speech, impair "those opportunities for public education which are essential to effective exercise of the power of correcting error" (*Thornhill* v. *Alabama*, 310 U.S., at 95).

Against this interest of the public to be informed concerning the conditions of unionization in industry, an interest which the Bill of Rights protects, the state poses no

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countervailing interest. There is here shown no "clear danger of substantive evils [arising] under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion." *Thornhill* v. *Alabama*, 310 U.S., at 104-105. As in the *Wohl case*, 315 U.S., at 776, the record here

> "... does not contain the slightest suggestion of embarrassment in the task of governance; there are no findings and no circumstances from which we can draw the inference that the publication was attended or likely to be attended by violence, force or coercion, or conduct otherwise unlawful or oppressive; and it is not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing."

Rather, Colorado here, as did Illinois in the *Swing* case and New York in the *Wohl* case, seeks to insulate controversies concerning unionization from public view merely because it desires to shelter the interest of industrial concerns and non-union employees from the economic repercussions which would follow if members of the public were persuaded to refrain from patronizing them. But this Court recognized in *Thornhill's* case (310 U.S., at 104-105), that "Every expression of opinion on matters that are important has the potentiality of inducing action in the interest of one rather than another group in society."

> " 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts . . . Indeed, the whole history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that the protections are given." *Thomas* v. *Collins*, 323 U.S. 516, 537.

Picketing, specifically, "may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of

the dispute . . . But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests . . . The danger of injury to an industrial concern is neither so serious nor so imminent as to justify the sweeping proscription of freedom of discussion embodied in Section 3448" (*Thornhill* v. *Alabama*, *supra*, at 104).

In the *Swing* case (312 U.S., at 325), this Court held that danger of economic injury to the very interests which Colorado seeks to protect, i.e., the right of employees to refrain from joining a union and the business interests of their employer, could not justify restrictions upon peaceful picketing. And in the *Wohl* case it was held (315 U.S., at 776) that economic injury resulting to non-union bakery drivers, who owned their own trucks, as a result of picketing to induce the public not to purchase the products they delivered, was "no substantive evil of such magnitude as to mark a limit to the right of free speech."

B. Unionization, Like Wages and Hours, Is A Matter of Vital Economic Concern to All Engaged in the Same Industry; No State Can Withhold from Employees Engaged in A Single Industry The Right to Inform Others in The Industry Through Picketing of Conditions Regarding Unionization Therein.

The judgment below precludes appellants from walking back and forth in front of milk processing plants in Denver for the purpose of observing non-union dairy truck drivers as they approach, and soliciting them to join the Union. Yet, in view of the mobility of these drivers, this is the most practical, if not the only, method available to appellants for contacting and persuading them of the advantages of unionization.

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The judgment below also precludes appellants from walking back and forth in front of dairies in Denver for the purpose of observing the delivery of milk and informing the union members employed therein whether particular deliveries are being made by drivers who are members or non-members of the Union.

In these respects the judgment below denies freedom of speech on a subject vital to fundamental interests of those to whom the right to communicate and to receive this information is denied.

Long ago this Court recognized the essential community of interest between all employees engaged in the same industry. Effective competition between employees and employers for shares of the product of industry is possible only through united action by employees. "Union was essential to give laborers opportunity to deal on equality with their employer." *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U.S. 184, 209. Because it was essential, this Court recognized the right of employees to organize labor unions, embracing all engaged in a single trade or industry, which, by eliminating the competition of non-union employees, could attain for employees in the industry, vis-a-vis employers, that equality of bargaining power which is essential to freedom of contract. As Mr. Justice Taft said, speaking for the Court in the *Tri-City* case:

> "To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because, in the competition between employers, they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership, and especially among those whose labor at lower wages will injure their whole guild."

The point was succinctly made by the New York Court of Appeals in *Exchange Bakery* v. *Rifkin*, 245 N.Y. 260, 263, 157 N.E. 130:

> "All engaged in a trade are affected by the prevailing rate of wages. All, by the principle of collective bargaining. Economic organization today is not based on the single shop. Unions believe that wages may be increased, collective bargaining maintained, only if union conditions prevail, not in some single factory but generally."

It was to these facts of industrial life that this Court referred in the *Swing* case (312 U.S., at 326) when it said: "The interdependence of economic interest of all engaged in the same industry has become a commonplace."

If, then, "Members of a labor union might, without special statutory authorization by a State, make known the facts of a labor dispute,"[5] to the public, *a fortiori* may they make those facts known to employees engaged in the same industry, and to members of their own union. It is no answer to say that communication to fellow employees or union members may be barred because the purpose of such communication is to persuade them not to buy merchandise or to perform services. It was on this theory that Shasta County, California, sought to justify the ban on picketing which was invalidated by this Court in *Carlson's* case, 310 U.S. 106, 112. The Court there said:

> "It is true that the ordinance requires proof of a purpose to persuade others not to buy merchandise or perform services. Such a purpose could be found in the case of nearly every person engaged in publicizing the facts of a labor dispute; every employee or member of a union who engaged in such activity in the vicinity of a place of business could be found desirous of accomplishing such objectives; disinterested persons (who

[5] *Senn* v. *Tile Layers Protective Union*, 301 U.S. 468.

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might be hired to carry signs) appear to be a possible, but unlikely, exception. In brief, the ordinance . . . proscribes the carrying of signs only if by persons directly interested who approach the vicinity of a labor dispute to convey information about the dispute."

We have demonstrated above that communication to the public of the facts of a dispute concerning unionization cannot be barred because of a state's desire to shield the picketed enterprise and its employees from loss of public patronage (pp. 31-32, *supra*). The economic repercussions which result from communication of the facts of the dispute to fellow union members who may thereupon refuse to perform services for participants in the dispute differ neither in kind nor in degree from those resulting from loss of patronage. Freedom of communication may not be sacrificed merely because it may result in either or both types of injury.

Although neither the majority nor the dissenting opinion below even mentioned the point, an attempt may conceivably be made by the appellees in this Court to justify the holding of the Supreme Court of Colorado on the ground that the picketing was violative of Section 6(2)(a) of the Colorado Act in that it tended "To coerce . . . an employee" in the exercise of the right declared in Section 4 of that Act, to refrain from joining a labor organization. Thus, it has been suggested that just as a state may constitutionally prohibit an employer from coercing employees to join or not to join a labor organization through the use of his economic power over jobs, so a state may constitutionally prohibit employees from "coercing" other employees engaged in the same industry to join a labor organization through picketing. The analogy is at once facile and false.

This Court has recognized that when an employer utilizes his property rights to discharge or threaten to discharge employees for joining a labor organization which the employer opposes, or for not joining a labor organization

(usually company-dominated) which the employer favors, the employer is protecting no legitimate interest of his own. In *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33-34, as well as *Texas & N.O.R. Co.* v. *Brotherhood of Railway Clerks*, 281 U.S. 548, 570-571, this Court held that the employer had no constitutional right to preserve for himself, vis-a-vis employees, a bargaining position so outrageously superior that freedom of contract between him and the employees was a myth. Well settled doctrines, deeply embedded in our jurisprudence, vested in government adequate power to redress a situation in which wage bargains were in fact the product of employee helplessness and employer duress (see *infra*, p. 51). It was because the Constitution guaranteed to employees the right to organize and bargain collectively that government was empowered to prohibit an employer from utilizing his *property rights* to interfere with the self-organizational freedom of employees. Because employers had not even a legitimate interest, much less any constitutional right, to interfere with the organizational freedom of employees, this Court declared that legislation which withdrew from the employer power to utilize his property rights in such manner as to coerce employees in the exercise of their fundamental rights to self-organization did not infringe constitutional guarantees.

But this Court also held that even the employer could not constitutionally be denied the right to influence the conduct of employees in organizational matters by exercising his right to freedom of speech. *N.L.R.B.* v. *Virginia Electric Power Co.*, 314 U.S. 469; *Thomas* v. *Collins*, 323 U.S. 516, 537-538, 543-544, 548; *N.L.R.B.* v. *American Tube Bending Co.*, 134 F. (2d) 993, certiorari denied, 320 U.S. 768. The employer could not constitutionally be denied that right even though the purpose and effect of its exercise was to induce employees not to join a labor organization and thereby to perpetuate "inequality of bargaining power between employees who do not possess full freedom of

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association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association [which] substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries" (Section 1, National Labor Relations Act, 49 Stat. 449), a matter clearly within the power of Congress to regulate. The employer could not constitutionally be denied that right, although it was perfectly clear that by virtue of his property rights and control over employees' jobs his mere suggestion that employees refrain from joining a union, though couched in the language of persuasion, exerted an influence upon employees far greater than would the similar arguments of other speakers. *N.L.R.B.* v. *Federbush Co.* 121 F. 2d 954, 957 (C.C.A. 2); *N.L.R.B.* v. *Link-Belt Co.*, 311 U.S. 584, 600; *N.L.R.B.* v. *International Association of Machinists*, 311 U.S. 72,78; *N.L.R.B.* v. *Virginia Electric Power Co.* 314 U.S. 469, 477; *N.L.R.B.* v. *American Tube Bending Co.*, 134 (F. (2) 993.

Since employers, therefore, do not "coerce" employees by peacefully persuading them to stay out of a union and are protected by the Constitution in such persuasion, it is plain that employees do not "coerce" other employees by peacefully persuading them to join the union, and the Constitution protects this conduct, too.

Indeed the relationship between union and non-union employees engaged in the same industry bears no resemblance to the employer-employee relationship. Not only is there lacking in that relationship the inequality of bargaining power which characterizes the relation of employer-employee; there is present among all employees in the industry a vital and legitimate interest in the wages, hours and bargaining position of their fellows. Moreover, when union members seek, by picketing (and by refusing to work as we

shall show below, *infra*, pp. 50-62), to influence non-members to join the union in the interests of preserving the wage standards and bargaining position of all, they are relying not upon the exercise of property rights, but upon the exercise of civil rights—to freedom of speech, freedom of the press, freedom of association, freedom of assembly, and the right to be free from involuntary servitude (see *infra*, pp. 53-59). The economic consequences which flow from the exercise of these civil rights cannot be dubbed "coercive" and thereby be made illegal and enjoinable without subverting these civil rights themselves (see cases cited p. 32, *supra*).

As the employer free speech cases under the Wagner Act, cited above, make clear, it is one thing to say that a legislature has the right to control and regulate the economic consequences which flow from the exercise of property rights; it is quite another thing to say that a legislature has the right to control the economic consequences which flow from the exercise of civil rights. This Court held in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 639, that although property rights are subject to such restrictions as a state may have "rational basis" for adopting, "freedom of speech and of the press, of assembly and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent great and immediate danger to interests which the State may lawfully protect." While the interest of employees in remaining non-members of a union may be one which the legislature has "reasonable basis" for protecting against the property rights of employers, it is not an interest which the legislature can constitutionally protect against the economic consequences which flow from the exercise of civil rights by union members engaged in the same industry.

The true analogy lies not in restrictions which a State may impose upon the exercise of property rights, but in the protection which the Constitution accords to the exer-

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cise of civil liberties by religious and social groups. To take only one example: The constitutional right to freedom of speech, freedom of press and freedom of assembly extends to the presentation, through the media of books, plays and motion pictures, of views which may offend particular social groups or religious sects in the community. May not these groups in concert refuse to patronize purveyors of such books, plays or motion pictures, and urge the public at large to take similar action? Could even peaceful picketing by Catholics, of a theatre showing a play or motion picture classified by the National Catholic Legion of Decency as "objectionable," be constitutionally enjoined? Yet the mere declaration by the Legion of Decency that a particular book, play or motion picture is "objectionable," hardly less than picketing of the theatre, would result in the loss by the publisher or theatre owner of the patronage at least of all devout Catholics and of those who sympathize with their position.[6]

Just as the state is powerless to prohibit the National Catholic Legion of Decency from publishing to Catholics and to the world that a particular play is "objectionable," so is the state powerless to prohibit a labor organization

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[6] The following story, reprinted from the New York Times of Tuesday, November 4, 1947, p. 31, illustrates the use of methods far more potent than those available to labor organizations to accomplish the objectives desired by the group. Yet the constitutional stature of such methods, used in this context, so far as we are aware, has never been doubted.

"Cardinal Dougherty today threatened with a year's boycott two Philadelphia theatres exhibiting pictures classified by the National Catholic Legion of Decency as 'wholly objectionable.'

In identical letters sent to William Goldman, Owner of the Erlanger Theatre where Howard Hughes' production of 'The Outlaw' is being shown, and to Twentieth Century Fox Theatre where 'Forever Amber' is the attraction, the Cardinal said 'I shall direct all Catholics in this (Philadelphia) Archdiocese to boycott (your two theatres) for one year unless this warning is heeded in 48 hours.

Both the clergy and laity of the Archdiocese, numbering more than 1,000,000 people, the Cardinal said, have been 'provoked' by the presentation of the two pictures in the face of the Legion of Decency ban.

The boycott would be in effect against all productions at the Erlanger and Fox Theatres, the Cardinal said. It also would apply to all Fox Co. productions 'in no matter what theatres they may be shown,' and will apply on the same basis to 'any other theatres that dare exhibit these indecent films'."

from publishing to its members and to the world that a particular employer is "unfair." Just as the state is powerless to prohibit the National Catholic Legion of Decency from picketing what it regards as an "objectionable," enterprise, so is the state powerless to prohibit a labor organization from picketing an enterprise which it regards as "unfair."

The decree enforced in this case prohibits union members not only from picketing, but also from "in any manner publishing" their views concerning non-union dairies to the customers who buy the products of those dairies. Even if picketing were not, as it is, "the workingman's method of communication," (*Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U.S. 287, 193), certainly workingmen, no less than others, would enjoy the right under the First Amendment to publish their views by the traditional modes of communication, through speech, privately or in public assembly, and by the printed word through newspapers, leaflets and handbills. Yet in the sweeping decree here entered the Supreme Court of Colorado has not only prohibited appellants from expressing their views concerning the dispute through picketing; it has banned, in addition, all "other modes of communication," traditional or otherwise (cf. *Carpenters & Joiners Union of America* v. *Ritter's Cafe*, 315 U.S. 722). Such a prohibition cannot conceivably stand.

In their complaints, R. 10-11, 242, 247, 251, 264, appellees charged that the picketing and the consequent refusal of the drivers, dairy employees and retail clerks to handle non-union milk was designed to prevent the delivery and processing of milk and dairy products by anyone except members of the Union, and that the objective thereof was "To create an absolute monopoly in, and exclusive control of the handling of milk in Denver and the Milk Shed and place that monopoly in the hands of the Defendant Local No. 537, to the exclusion of competition and free traffic therein."

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The complaints did not allege, however, that the Union sought to exercise control over market price, or the production or sale of goods, or indeed over anything other than the wages, hours and other working conditions on which laborers in the dairy industry would dispose of their services. And the complainants did not allege that appellants' objective in this regard was unlawful either under Colorado law, or under any law of the United States. Compare *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 502-503. The trial court found that the objective of appellants "was lawful" (p. 14, *supra*), and the Supreme Court of Colorado did not reverse this finding.

It is true that the complaint of appellee Beach Milk Company alleged, in addition, that the Union sought to induce the Company to enter into a union-shop agreement, and that it would have been illegal under the Colorado Act for the Company to execute such an agreement without the consent of three-quarters of its employees evidenced by vote in a secret ballot election, (*supra*, p. 12). It is also true that the temporary restraining order in the *Beach Milk* case was issued under this allegation of the complaint. In none of the other four cases, however, was such an allegation made. Indeed Linton Austin, carrier complaint in No. A-45106, testified at the hearing that no union representative even approached him with a request that he sign a contract with the Union, and that he knew of the Union's organizational campaign only because his employees told him that they had been solicited to join the Union (R. 80-81, cf. 99). Witnesses for the complainants testified that the Union's purposes was to "organize the drivers and get them in the Union" (R. 33, 28, 36). The courts below treated the cases as presenting identical issues and neither the trial court after hearings, nor the Supreme Court of Colorado, found that the picketing was for the purpose of inducing any of the appellee employees, including the Beach Milk Company, to execute an agreement illegal under the

state law. The picketing was held unlawful by the Colorado Supreme Court not because it tended to induce employees to commit an "unlawful" act, but solely because the pickets were non-employees and because they sought to induce fellow unionists and the public to refrain from assisting the processing and distribution of milk under non-union conditions.[7]

Since the Colorado courts did not hold that the picketing was illegal because of any assumption that its purpose was to induce the employers to enter into "illegal" agreements, this case does not present the question whether a State can constitutionally prevent an employer from entering into a closed-shop contract. Nor does it prevent the question whether, assuming the validity of such ban, a State can constitutionally prevent peaceful picketing by employees engaged in the industry who describe an employer as "unfair" because he refuses to execute such an agreement. Clearly, as we have demonstrated above, as long as non-union employees remain free to join the union, and they remained free to do so in this case, picketing at the premises of their employer for the purpose of requesting the public and fellow unionists to refrain from patronizing goods produced by them as long as they remained non-members of the union could not constitutionally be enjoined. See *Park & Tilford Corp.* v. *International Brotherhood of Teamsters*, 165 P. (2d) 891, 27 Calif. (2d) 599; *Peters* v. *Central Labor Council*, 169 P. (2d) 870, ____ Ore. ____.

But even if the court below had found that the picketing was for the purpose of inducing the public and union members to refrain from patronizing an employer unless he executed a union-shop contract at a time when he could not lawfully execute such a contract under Colorado law;

[7] The evidence shows, for example, that employees of the dairies, appellants here, refused to unload or handle milk delivered by non-union drivers because the drivers who delivered the milk refused to join the union.

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or if it be assumed that a state could validly prohibit the making of a closed shop contract, (which we deny; see Witherspoon, *State Legislation Banning Union-Security Agreements; The Due Process Issue and Judicial Self-Restraint*, 26 Texas Law Review 47) it would by no means follow that the picketing could constitutionally have been prohibited.

Certainly, picketing of motion picture theatres by the National Catholic Legion of Decency, for example, could not be prohibited merely because a state had decreed, (assuming that it could constitutionally do so), that theatre owners could not lawfully refuse to display motion pictures termed "objectionable" by the Legion. Even if the state could require such pictures to be shown, it could not require Catholics to patronize the theatres, nor could it prohibit Catholics from requesting the public not to patronize them. Similarly, even if it be assumed that a state could constitutionally prohibit the making of closed-shop contracts, a state could not require employees to patronize, or prohibit them from asking the public not to patronize, employers who refused to make such contracts. Not the right to petition for redress of grievances alone, but the right to freedom of speech, freedom of the press, freedom of assembly, and freedom from involuntary servitude as well—all civil liberties which are the fundamental rights of free men—"are essential to effective exercise of the power of correcting error." Exercise of these rights under the Constitution, as under the Norris-LaGuardia Act, cannot be prohibited because of "any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end" sought to be achieved. *United States* v. *Hutcheson*, 312 U.S. 219, 232.

It goes without saying that "free trade in the opportunity to persuade to action" (*Thomas* v. *Collins*, 323 U.S. 516, 537), which is guaranteed by the First and Fourteenth

Amendments, is denied when a state either enjoins protected utterances, or subjects the speaker to liability for damages because he has been successful in persuading others to take action. The judgment of the Supreme Court of a state, that under state law union members are liable in damages for loss caused to the picketed enterprise as a result of the refusal by customers to patronize the enterprise, the refusal by employees to work therein, and the refusal by union members to deliver to or receive goods from the enterprise, imposes a "previous general restraint" upon picketing, in the same sense as does an injunctive decree or a criminal statute. See *Lovell* v. *Griffin*, 303 U.S. 44; *Schneider* v. *State*, 308 U.S. 747; *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Thomas* v. *Collins*, *supra*. Here Colorado has done both things. It held appellants liable in damages and it enjoined appellants from picketing or otherwise conveying information to union members and to the public. Although the decree in the *Beach Milk* case on its face enjoins only picketing at Piggly-Wiggly Stores, the extension of the decree to the other four cases, in which no such picketing was involved, as well as the majority and dissenting opinions below, make it clear that the court construed the injunction as prohibiting all picketing at union or non-union dairies. This was the very injunctive relief requested in those cases and an injunction banning picketing only at the Piggly-Wiggly stores would not have affected the complainants in the other cases at all. The court below held picketing at both union and non-union dairies was illegal and by extending the injunction to all of the cases, as well as by remanding the cases for "further proceedings with respect to damages and otherwise as may be necessary, such proceedings to be in harmony with the views herein expressed," indicated that further picketing at the dairies would violate the permanent injunction. It also held appellants answerable in damages for the economic injury resulting to the farmer-producers, carriers

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and dairies from the picketing which caused union members to refuse to handle milk delivered by non-union drivers and caused union drivers to refuse to deliver milk to non-union processing plants. In both respects Colorado has impinged upon the guarantee of freedom of speech.

II

THE THIRTEENTH AND FOURTEENTH AMENDMENTS PRECLUDE THE STATES FROM COMPELLING EMPLOYEES, WHO ARE ENGAGED IN A DISPUTE CONCERNING UNIONIZATION, TO PERFORM WORK AND RENDER SERVICES, WITHOUT THEIR CONSENT, FOR THE BENEFIT OF THEIR ADVERSARIES IN THE DISPUTE.

A. No State Can Compel An Individual to Serve Another Whom He Does Not Wish to Serve.

Both the injunction issued in these cases and the judgment that appellants are liable in damages for the economic injury sustained by the appellees as a result of appellants' refusal to deliver milk to non-union dairies and to handle milk delivered by non-union drivers subject appellants to involuntary servitude, in violation of the Thirteenth Amendment.

By extension of the injunction to the Denver Milk Producers and associated cases, appellees Davis, Peterson and Gillis, as employees of the Carlson-Frick Company, and A. B. Parker, Ray Cerva and Henry Oetzel, as employees of Beatrice Creamery Company, are compelled, as the employees of the Piggly-Wiggly Stores who are restrained from refusing to work on Beach products under the injunction issued in the *Beach* case are compelled, to unload, handle and otherwise process and work on milk delivered to their respective dairies by non-union drivers. By exten-

sion of the injunction to those cases truck drivers, who are members of the Union, are required to transport and deliver milk from farmer-producers to non-union dairies just as the Piggly-Wiggly employees are required to sell Beach milk. By sustaining appellees' right to damages in all five cases the court below held that it was unlawful for the appellants, employees of the milk processing plants, to refuse to work on milk delivered by non-union drivers, despite the fact that it was not even contended by appellees that the employees had bound themselves by contract, either with their own employers or with the carriers, to work on or process such milk (See R. 17). The court below also held that it was unlawful for union drivers to refuse to deliver milk to non-union dairies despite the fact that appellees did not even contend that this refusal was in violation of any contract made by the drivers either with their own employers, or with the non-union dairies, or with farmer-producers. By the injunction issued in the *Beach* case employees of Piggly-Wiggly Stores are required to cease and desist from "refusing to handle and sell the products of said Company," when delivered at Piggly-Wiggly Stores. There was no showing or contention that these employees were bound by contract either with the stores or with Beach to handle and sell Beach milk.

The fact that individual employees, personally and as union members, were joined as parties defendant in the suits in the state courts, and that the injunctive relief as well as the relief in damages ran against them personally and as union members leaves no room for doubt that the state court intended to and did compel these union members individually to perform work and render services against their will. The refusal of a single union truck driver, with knowledge of the decree, to deliver milk to a non-union dairy, would constitute contempt of the court's decree and subject him to liability for damages. The refusal of one of the appellant-employees to unload milk delivered

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by a non-union driver would constitute contempt of court and subject him as well to liability for damages. The refusal of a retail clerk, with knowledge of the decree, to sell Beach milk would likewise be contempt of court. Mere refusal to work carries the consequence not alone of fine, but of imprisonment. Once imprisoned, it is true, these employees would carry the key to their prison in their own hands—the key would be involuntary servitude.

In *Bailey v. Alabama*, 219 U. S. 219, this Court, speaking of the Thirteenth Amendment, declared:

> "The plain intention was to abolish slavery of whatever name and form and all of its badges and incidents; to render impossible any state of bondage, to make labor free by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude."

We do not perceive what social policy Colorado believes it is fostering by thus compelling individuals, including appellants in this case, to render services against their will. Here there is not even the excuse offered in the *Bailey* case, and in *Pollock v. Williams*, 322 U. S. 4, that, by refusing to work, the individuals involved had broken their contracts or wilfully refused to pay their debts. And even the great social value which inheres "in enforcing contracts and collection of debts" cannot justify "a suspension of the right to be free from compulsory service." *Pollock* case, *supra*, at p. 17. Even where the quitting of work is an actionable civil wrong because done in violation of contract, "no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor" (*ibid.*).

We do not deny that there are instances in which society may compel a man to work against his will. As this Court has pointed out, "forced labor has been sustained as a

means of punishing crime, and there are duties such as work on highways which society may compel." *Pollock v. Williams, supra.* But the duty to perform certain work or services which man owes to society, like the duty to bear arms on its behalf, is one which government may compel only to preserve itself. And, more important, those duties are owed only to society, not to other individuals. Thus, assuming that society, when threatened by a danger grave and immediate, may compel a man to labor for its preservation (cf. *United States v. United Mine Workers*, 67 S. Ct. 677),[8] it cannot, under these or any other circumstances, for any reason, dispose of the labor of one man for the benefit of another. As the Supreme Court of Florida said in *Henderson v. Coleman*, 150 Fla. 185, 7 So. (2d) 117:

> "We are not advised of any rule of law under which any man in this country may be forced to serve with his labor any other man whom he does not wish to serve."

In *Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 18 So. (2d) 810, the Supreme Court of Alabama held unconstitutional, as violative of the Thirteenth Amendment, Section 12 of the Bradford Act which made it unlawful:

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[8] We assume, arguendo, that this was the holding of the *Lewis* case, although, as we read the opinion, not even in that case were the individual miners compelled to work against their will on pain of punishment for contempt of court. That case seemed to turn rather on the right of John L. Lewis, as President of the United Mine Workers, to declare that the contract between the Union and the Government was at an end and thereby invoke the Union's "no contract—no work" rule. Of course, the immunity of union officers, acting on behalf of the members, to call a strike, is not necessarily coextensive with the immunity of individuals from compulsory labor. See *Dorchy v. Kansas*, 272 U. S. 306. The scope of that immunity is measured rather by the guarantees of the First and Thirteenth and Fourteenth Amendments, as they protect employees in the exercise of their right to self-organization and in their correllative fundamental rights in concert to picket, strike and boycott. See *infra*, pp. 50-62. The instant case, of course, presents no question concerning an attempt at regulation of the relationship of a union to its members, or of the exercise by union officers of their function under a union's Constitution and By-Laws to call or direct a strike or boycott.

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"in and about the business of an employer for any employee to refuse to handle, install, use, or work on any particular materials, equipment or supplies because not produced, processed, or delivered by members of a labor organization."

The court there said:

"Section 12 . . . makes it a crime—a misdemeanor—with permissible heavy penalty, for a single workman to refuse to handle any material because not produced, processed, or delivered by members of a labor organization . . .

• • •

. . . the authorities recognize that the workman has a right to refuse to work with non-union material. Yet under this section he would be compelled to work, or else be guilty of a criminal offense. Of course, every man may engage to work for or deal with, or refuse to work for or deal with, any man or class of men as he sees fit—whatever his motive or the resulting injury—without being held in any way accountable therefor . . .

• • •

. . . The individual workman may be acting in entire good faith and in obedience to a rule of his local union, or he may be acting in entire good faith in what he considers to be the best interests of the union to which he belongs, and to labor unions in general. His conduct may be in the nature of an individual protest against the use by his employer of material not processed by members of a labor union. But all of this entirely lawful . . .

• • •

The effect [of the statute] would be . . . to make it a crime under such circumstances to engage in a labor dispute concerning work with non-union material.

• • •

. . . We are inclined to the view that [the refusal of a workman to work on non-union goods] is simply a refusal to perform a contract for personal service,

which is under this section made a crime, and that it infringes closely upon the Thirteenth Amendment to the Federal Constitution prohibiting involuntary servitude of any character.

The decree entered in this case, and the Colorado statute as here interpreted by the Supreme Court of Colorado, compel drivers and dairy workers and retail clerks to labor against their will, not on behalf of society, but rather for the benefit of carriers, farmer-producers, dairies and retail store owners who wish to hold them in bondage.

Both in so far as the decree imposes civil liability upon individuals for refusing to work in the absence of a contract, and in so far as it makes available what are in effect criminal sanctions to compel employees to render services against their will, the decree cannot stand.

B. No State Can Make it Unlawful for Employees Engaged in A Dispute Concerning Unionization to Refuse Concertedly to Assist by Their Labor Hostile Economic Interests of Those Engaged in The Same Industry.

We believe that, in addition to requiring individual employees against their will to render services for a private employer, the judgment below, and the Colorado statute as here applied, violate the Thirteenth and Fourteenth Amendments in yet another respect. The statute as applied in this case makes it unlawful for employees in the dairy industry in concert to withhold their labor and services for the purpose of extending unionization in the industry and the decree enjoins them from doing so.

In *Pollack v. Williams, supra*, this Court said:

"The undoubted aim of the Thirteenth Amendment as implemented by the Antipeonage Act was not merely to end slavery but to maintain a system of completely

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> free and voluntary labor throughout the United States . . . in general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers. When the master can compel and the laborers cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work. Resulting depression of working conditions and living standards affect not only the laborer under the system, but every other with whom his labor comes in competition."

While it is true that "the right to change employers" is crucial to a workman's right to defend himself against "oppressive hours, pay, working conditions, . . . harsh overlordship [and] unwholesome conditions of work," this Court, as early as 1921, recognized that this right alone, in the conditions of modern industrial society, was entirely inadequate for that purpose.

> "A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment."[9]

Because the individual employee was "helpless" to resist the depression of his working conditions and living standards labor unions were organized "out of the necessities of the situation . . ." "Union was essential to give laborers opportunity to deal on equality with their employer."

> "They united to exert influence upon him and to leave him in a body, in order, by this inconvenience, to induce

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[9] *American Steel Foundries v. Tri-City Central Trades & Labor Council*, 257 U. S. 184, 209; compare the earlier statement to the same effect in *Holden v. Hardy*, 169 U. S. 366, 397, and see the testimony of Bishop Francis Haas, Member of the National Labor Relations Board established under Section 7 of the N. R. A. before a Senate Committee considering the Wagner Bill. *Hearings*, Senate Committee on Education and Labor, on S. 2926, 73rd Cong., 2nd Sess., Pt. 1, p. 116.

> him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth . . . The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital." (*American Steel Foundries* case, *supra.*)

In the face of these facts of industrial life, can it seriously be contended, as appellees contended below, that the Thirteenth Amendment's guarantee of a system of "free and voluntary labor" encompasses only the right to change employers, or that it is applicable only to quitting of work by individuals and that it does not protect the right of workingmen to cease work in concert in protest either against oppressive working conditions or a bargaining position which leaves them without adequate "power to redress" working conditions which they believe unfair or oppressive? So to hold would make a mockery of the Thirteenth Amendment. If the only pathway from slavery is one which the workingman is helpless to take, the road to freedom is a mirage.

This Court knows that under the conditions of contemporary industrial life the bargaining position of employees in a single industry or trade is by no means commensurate with that of the employers unless employees are organized. Cf. *Apex Hosiery Co. v. Leader*, 310 U. S., at 502-504. This Court knows that "in order to render a labor combination effective it must eliminate the competition from non-union made goods" (*ibid.*). And this Court also knows that "an elimination of . . . differences in labor standards is [as it must be] the objective of any national labor organization" (*ibid.*). Compare *N. L. R. B. v. J. I. Case Co.*, 321 U. S. 332; *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678.

The record in this case shows that the farmer-producers in the Denver area, organized in the Denver Milk Producers

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Association, absolutely control the milk supply of Denver (R. 3, 116-117, 128-129). It shows furthermore that the farmer-producers have the power, by using only carriers who employ non-union drivers, and by selling their milk only to dairies employing non-union help, to deny the opportunity to earn a living to union members in the dairy industry. The only possible way for union members to protect themselves, the only way to preserve their union against such an attack (see, e.g., R. 96, 124-127, 130, 169-170, 185), is to unionize all milk truck drivers and dairy employees in the Denver area.

Under these circumstances the right of workingmen to organize and in concert to withhold their labor for the purpose of defending their jobs and the existence of their union, of achieving equality of bargaining power, and protecting their own standards of wages and working conditions, is necessarily a "fundamental right" (*N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33; cf. *Thomas v. Collins, supra*), not alone because it is an exercise of freedom of speech and assembly, and an essential part of the "liberty" guaranteed by the Fourteenth Amendment, but also because it is protected by the Thirteenth Amendment.

Dissenting in *Duplex Printing Co. v. Deering*, 254 U. S., at 481, Mr. Justice Brandeis queried,

> "May not all with a common interest join in refusing to expend their labor upon articles whose very production constitutes an attack upon their standard of living and the institution which they are convinced supports it?"

He pointed out (*ibid.*, at 482) that, even in those days, "courts, with better appreciation of the facts of industry, recognized the unity of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself."

Six years later, dissenting in *Bedford Stone Co. v. Journeymen Stone Cutters Association of North America*, 274 U. S. 37, he said:

> "Members of the Journeymen Stone Cutters' Association could not work anywhere on stone which had been cut at the quarries by 'men working in opposition to it', without aiding and abetting the enemy. Observance by each member of the provision of their constitution which forbids such action was essential to his own self-protection. It was demanded of each by loyalty to the organization and to his fellows. *If, on the undisputed facts of this case, refusal to work can be enjoined, Congress created by the Sherman Law and the Clayton Act an instrument for imposing restraints upon labor which reminds one of involuntary servitude.*" (Italics supplied.)

The right of laboring men to act in concert through unions for the betterment of their economic life is thus inherent in and essential to effectuation of the policy which the Thirteenth Amendment decrees. The objective of labor unions—to raise the standard of living of workingmen who are their members—cannot therefore be made illegal by any State. Certainly, that objective cannot be placed on a par with the objectives of combinations of businessmen or of social groups which enjoy no such fundamental constitutional protection. And therefore any limitations which may be imposed upon pursuit of this objective by workingmen, exercising through their unions the civil rights of freedom of speech, freedom of the press, freedom of assembly and freedom to cease work, must be tested by standards far more stringent even than those which are applied to limitations upon the exercise of civil rights by other groups for purposes which the state may lawfully declare inimical to its welfare.

It was not until *Thornhill's* case that this Court gave recognition to the fact that safeguards for "the conventional tactics of organized labor in its effort to improve

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its material conditions" were inherent in the Constitution, and that "the principles of liberty which are axiomatic in our political life" demanded an end to governmental encroachment upon those tactics.[10] Following *Thornhill's* case, this Court refused to permit a state to ignore the "interdependence of economic interest of all engaged in the same industry." *American Federation of Labor v. Swing*, 312 U. S., at 326. It refused to permit a state to draw "the circle of economic competition between employers and workers so small as to contain only an employer and those employed by him" (*ibid.*). And it refused to permit the states to deny to organized labor, in its struggle to unionize individual industries, even the most potent of its weapons—picketing. Compare the concurring opinion of the late Mr. Chief Justice Stone in *United States v. Hutcheson*, 312 U. S. 219, 243.

The refusal of union members to perform any work on non-union made goods or to supply goods to non-union shops is one of the most traditional and widespread of the tactics which labor finds essential in its efforts to maintain decent standards.[11] It has found wide acceptance by employers throughout the United States.[12] Certainly, if the First Amendment protects the right of labor organizations to preserve themselves and their standards of wages, hours and working conditions by picketing and asking the public to withhold its patronage from non-union goods, the members of the union themselves, engaged in the same industry, have a right under the Thirteenth Amendment, as well as under the Fourteenth, to preserve themselves by refusing

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[10] Frankfurter and Greene, *The Labor Injunction* (1930), p. 220.

[11] See *Strikes and Lockouts* (Preliminary Draft) U. S. Department of Labor, Bureau of Labor Statistics, Industrial Relations Branch (Feb., 1947). Laidler, Harry W., *Boycotts and The Labor Struggle*, Part III, (New York, John Lane Co., 1913); Wolman, Leo, *The Boycott in American Trade Unions*, Chapter III, (Baltimore, The Johns Hopkins Press, 1916); Millis and Montgomery, *Organized Labor*, pp. 581-591 (McGraw-Hill, N. Y., 1945).

[12] See Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts*, Sec. 77 (1947).

to work on such goods. To hold that injury to business concerns which a union may lawfully ask outsiders to inflict by withholding patronage union members may not lawfully themselves inflict by withholding services is to lose sight entirely of the objectives of the Thirteenth and Fourteenth Amendments as well as of the values protected by the guarantee of freedom of speech. As the Supreme Court of Alabama said in the *McAdory* case, *supra*, "A strike is one manner in which labor communicates its position on certain questions to the outside world."

The minimal constitutional boundaries of a "labor dispute" were marked by this Court not in relation to some abstract mode of communication, but in relation to the workingman's basic right to act in concert through unions to improve his material conditions. Picketing, for example, brings to bear upon an enterprise, as this Court said in *Carpenters and Joiners Union v. Ritter's Cafe*, 315 U. S. 722, 726, "the full weight of familiar weapons of industrial combat." The right to bring those weapons to bear, to refuse to patronize, to picket, and to refuse to work on goods produced by an enterprise involved in a dispute concerning unionization, cannot, under the decisions of this Court, be denied to workers merely because they do not stand in a proximate relation of employment. A state is not free to disregard the facts of industrial life, and to shackle labor in its efforts to improve its economic position by drawing "the bounds of economic competition so small as to contain only an employer and those employed by him."

Both state and federal courts have recognized that attempts by a state to prohibit a concerted refusal by union members to handle or work on non-union made or serviced goods run afoul of the Thirteenth and Fourteenth Amendments. In *Stapleton v. Mitchell*, 60 F. Supp. 51, a statutory three-judge court composed of Circuit Judges Huxman and

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Murrah and District Judge Rice, held unconstitutional the provision of a Kansas statute (1943 Kansas Session Laws, Chapter 191), which made it unlawful to "refuse to handle, install, use or work on particular materials or equipment and supplies because not produced, processed, or delivered by members of a labor organization." Judge Murrah, speaking for the court, 60 F. Supp., at 61, said:

> "The right to peaceably strike or to participate in one, to work or refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the state may not condition or abridge in the absence of grave and immediate danger to the community."

In *Alabama State Federation of Labor v. McAdory, supra,* the Supreme Court of Alabama struck down as violative of "fundamental and basic civil rights as guaranteed under the Fourteenth Amendment" provisions of a state statute which, as does the Colorado Act, made it unlawful for employees to strike except where a strike was authorized by a majority of the employees in the bargaining unit. The court pointed out that the right to strike could not be made "dependent upon the will of others who may not in any manner be connected with, or interested in the welfare of the minority group . . . [or] who may not belong to or believe in a labor organization." The court further made plain its view that "a strike called to compel the handling of union material only" could not constitutionally be made illegal.

In *Henderson v. Coleman,* 150 Fla. 185, 7 So. (2d) 117, an injunction was issued against certain union members because they refused in concert, pursuant to a rule of their union, to unload the trucks of certain operators. The members of the union would not abide by the order of the court and were imprisoned for contempt. The union

members were thereafter discharged on habeas corpus because the Supreme Court held that the provision of the Florida Constitution prohibiting involuntary servitude had been violated. The Florida Supreme Court said (7 So. 2d at 121):

> "If the injunctive order be construed to mean that the officers and members of the Longshoremen's Association Local No. 1416 were thereby required to load or unload the trucks of 'Collins' although there was no contractual relation between the local and Collins, then such construction would violate the constitutional provision [against slavery and involuntary servitude] above referred to. We think it will not be contended that any member of the local could be committed to jail for refusing to load or unload the 'Collins' trucks. That service required the performance of manual labor and it is beyond the power of courts to punish one by imprisonment for failure to engage in involuntary servitude."

On October 3, 1947, the Supreme Court of California held unconstitutional the state "Hot Cargo Law" (Labor Code, Secs. 1131-1136, as added by Stat. 1941, ch. 623), which, as does Section 6(2)(g) of the Colorado statute, made it unlawful for union members to refuse to work on or handle non-union made goods. The facts in that case were similar to the facts in the *Beach Milk* case. There, the employer, a non-union manufacturer of furniture supplies, was being picketed by a Teamsters' Union. In addition, the Teamsters' Union was picketing, or threatened to picket, certain customers and suppliers having dealings with the employer. The employer sought and obtained an injunction under the California "Hot Cargo and Secondary Boycott Law" against the picketing or threatened picketing of the employer's customers and suppliers. In holding the injunction and the law under which it was issued to be invalid under the First and Fourteenth Amendments to the Federal Constitution, the California Supreme Court stated as follows (*Ex parte Blaney*, 184 Pac. (2d) 892, — Calif. ——.

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"The identification of the constitutional protection of the right of free speech, press, and assembly, with the publicizing of labor disputes or problems through the medium of picketing, boycotting and otherwise has been established. [Citing cases.] It has been phrased by this Court in various ways.

"'It is now settled law that workmen may lawfully combine to exert various forms of economic pressure upon an employer, provided the object sought to be accomplished thereby has a reasonable relation to the betterment of labor conditions, and they act peaceably and honestly. [Citations] This right is guaranteed by the Federal Constitution as an incident of freedom of speech, press and assemblage, [citations] and it is not dependent upon the existence of a labor controversy between the employer and his employees.' (*Steiner v. Long Beach Local No. 128*, 19 Cal. (2d) 311, 319, 333.)

"'Various means of economic suasion such as picketing, the primary and secondary boycotts, and refusal to work together, often go to make up concerted efforts to induce nonmember employees to join a particular union. Such conduct may be performed in the exercise of civil liberties, guaranteed by both our Federal and State Constitutions.' (*In re Porterfield*, 28 A. C. 102, 124.)"

This is not to say, of course, that a state is without power to hold unlawful concerted refusals to work which aim at the attainment of objectives unrelated to betterment of labor's economic position. The Thirteenth Amendment protects labor's right in combination to exert economic pressure so that labor may achieve a bargaining position from which it can defend itself against "depression of working conditions and living standards" and which it may use to seek improvement of those conditions and standards. Inherent in the purpose of the protection lie the limitations upon its scope. The constitutional rights to strike, to boycott and to picket need extend only to disputes in which labor seeks material economic advan-

tages or a bargaining position which makes possible their attainment. The rights need extend, in other words, only to "labor disputes." But it is for this very reason that the notions of a particular state about the "wise limits of an injunction in industrial controversies" (*Swing* case, *supra*) cannot be permitted to control. It is for this reason that "one need not be in a 'labor dispute' *as defined by State law*" (*Wohl* case, *supra*) to exercise the right in concert to strike, boycott or picket. In defining "labor disputes" for these purposes, this Court alone is the final arbiter, for it is then interpreting the guarantees of the Thirteenth Amendment, and of the Fourteenth, in their own right, and also as they absorb the First and the Fifth Amendments.

Nor do we here assert that the right to strike, or to boycott or to picket peacefully can never be limited as long as their use arises out of some issue of concern to workers. The Thirteenth and Fourteenth Amendments guarantee workingmen the right to associate and assemble, to speak, to refuse to work, and otherwise to act in concert for the purpose of protecting their vital interests in improved living standards; they do not necessarily contemplate "a class struggle." See Mr. Justice Brandeis, dissenting in *Bedford Cut Stone Co. v. Journeymen's Association*, 274 U. S., at 60. And so, under traditional doctrine, purely sympathetic strikes, refusals to work, refusals to deal, as well as picketing, need not be tolerated by the state, regardless of circumstances. As this Court said in *Ritter's* case, the Constitution does not require the view that "every instance of peaceful picketing—anywhere and under any circumstances—is necessarily a phase of the controversy which provoked the picketing." 315 U. S., at 728. Therefore, it has been held, a state may shield neutral enterprises, wholly unconnected with the industry in which the dispute arises, from picketing, strikes and boycotts. *Ritter* case, *supra*. So too, because disputes between members and

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non-members concerning unionization are industrial, not personal or social disputes, the state may perhaps, if it chooses, insulate the private lives of the contestants by prohibiting the picketing of employees at their homes. *Allen-Bradley Local No.* 111 v. *Wisconsin Employment Relations Board*, 315 U. S. 740.

We do not, moreover, here challenge the holdings that a state may insist that certain clearly justiciable issues between organized workers and employers be decided through the judicial process rather than through competition and the force of public opinion. *Dorchy v. Kansas*, 272 U. S. 306 (whether under the law of the state a workman was entitled to back pay); *United States v. United Mine Workers*, 67 S. Ct. 677 (whether, under the law, a collective bargaining agreement had or had not expired).

But we do strongly urge that a state may not limit or restrain the collective efforts of workingmen to improve their bargaining position in relation to employers in the industry in which they are engaged, and to obtain a fair share of "the joint product of labor and capital" (*American Steel Foundries* case, *supra*, at 209) through the exercise of their rights to freedom of speech, freedom of assembly and freedom to cease work. In *West Virginia v. Barnette*, 319 U. S. 624, 638, this Court said:

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

Restriction of these fundamental rights of workingmen must "find its justification in a reasonable apprehension

of danger to organized government." (*Herndon v. Lowry*, 301 U. S. 242, 258.)

Colorado has not shown (nor could it show) that the exercise by appellants in this case of their fundamental rights, guaranteed by the Thirteenth and Fourteenth Amendments, gave rise to any such danger. The only danger shown is that certain business firms may sustain economic injury as a result and that employees may be induced to join the Union. Neither is "a substantive evil of such magnitude as to justify a limit" to the constitutional rights which appellants exercised and seek to exercise again. *Bakery & Pastry Drivers, etc., v. Wohl, supra.*

III

NO STATE CAN CONSTITUTIONALLY PROHIBIT EMPLOYEES FROM PICKETING THE PRODUCTS OF AN EMPLOYER WITH WHOM THEY ARE ENGAGED IN A LABOR DISPUTE, OR FROM REFUSING TO HANDLE SUCH PRODUCTS.

The injunction, made permanent in this case, in terms prohibits appellants from "establishing and maintaining pickets against or about the products of the Beach Milk Company . . . at or about any [Piggly-Wiggly Stores or other retail stores in Denver], and in any manner publishing [that the Beach Milk Company is] unfair to union labor to the customers of said stores." The injunction also prohibits members of the Retail Clerks Union No. 7, American Federation of Labor, who may be employed in such stores from "refusing to sell and handle the products of [Beach Milk Company] when delivered at the Piggly-Wiggly or other stores."

What has been said in Points I and II above is applicable to this aspect of the decree as well. The majority

opinion of the Supreme Court of Colorado drew no distinction between the picketing at the Beach dairy and the refusal of union drivers to deliver milk to Beach on the one hand, and the picketing of Beach products at retail stores and the refusal of clerks to handle such products on the other. Nor did it draw any distinction between the picketing of the retail stores in the *Beach* case and the picketing of the union and non-union dairies in the other four cases, and we agree that no distinction can be drawn. From the point of view of the farmer-producers, the Association and the non-union carriers, the picketing at both non-union and union dairies was "secondary" in the same sense that, from the point of view of the Beach Milk Company, the picketing of Beach products at the Piggly-Wiggly Stores was "secondary". In all five cases the pickets, and the employees whose refusal to work or to deliver has here been enjoined, did not stand in a proximate relationship of employment with the complainants who are here appellees. And because, in the view of the Supreme Court of Colorado, all stranger picketing was made illegal by the Colorado Act, as well as all refusals to work on non-union goods, it held that the pertinent facts in all of the cases were sufficiently similar to justify the issuance of an injunction in each if an injunction was warranted in any one.

The dissenting judges below, however, did draw a distinction between the picketing of Beach products at the Piggly-Wiggly Stores and the picketing at union and non-union dairies. They held that, while the latter activities were lawful and constitutionally protected, the former activities were not. Misreading the opinions of this Court in the *Wohl* and *Ritter* cases, they held that the retail stores which sold Beach products were "neutrals having no relation to either the dispute or the industry in which it arose" because "Their sale of milk was a very minor part of the grocery business."

In the *Wohl* case this Court held that in a dispute between union and non-union bakery drivers, the unionists were constitutionally entitled to picket not only at the premises of manufacturers who sold bread to the non-union drivers, but also at the premises of customers who purchased bread from the non-union drivers. 315 U. S., at 772, 773, 775. Discussing this holding in the *Ritter* case (315 U. S., at 727), the Court said:

> "The dispute there related to the conditions under which bakery products were sold and delivered to retailers. The business of the retailers was therefore directly involved in the dispute. In picketing the retail establishments the union members would only be following the subject matter of their dispute."

In this case the dispute related in part to the conditions (union or non-union) under which Beach milk products would be processed and delivered to retailers. Here, as in the *Wohl* case, the union members were "only following the subject matter of their dispute." Moreover, since the public does not purchase Beach Milk at the dairies, but rather from retail stores, it is "practically impossible" for appellants "to make known their legitimate grievances to the public whose patronage was sustaining the [non-union] system except by the means here employed and contemplated." *Wohl* case, *supra*, at 775.

Moreover, the record here shows that only by enlisting the support of the public, through picketing of the retail stores which sold Beach milk, could the union hope to succeed in its efforts to unionize the non-union drivers who delivered milk to Beach. The refusal of union drivers to deliver milk to non-union dairies, and the refusal of union members in the dairies to handle milk delivered by non-union drivers exerted little, if any, economic pressure on the non-union drivers to change their position and join the union. Virtually the only result of these activities

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was that the Association directed non-union drivers to deliver milk to non-union dairies and union dairies to deliver milk to union dairies. As long as non-union dairies could process and sell to the public the milk delivered by non-union drivers, those drivers had no incentive to join the Union, nor did the farmer-producers have any incentive to deal with carriers who employed union drivers or to consign their milk to dairies which employed union members. Because it was the patronage of the public which was sustaining the non-union drivers in their recalcitrant refusal to join the Union, the Union could hope to succeed in the dispute only if it could persuade the public to withdraw its patronage from them. That could be done only through picketing at the retail stores which sold Beach milk, for these stores constituted the only nexus between the public and the non-union drivers who delivered milk to Beach.

The proprietors and managers of the Piggly-Wiggly Stores were not, of course, "neutrals" in the dispute. As the Court recognized in the *Wohl* case, an employer who sells materials to or purchases goods from an employer engaged in a labor dispute is *pro tanto* in unity of interest with that employer, and is not a "stranger to the issue" (*ibid.*).

The New York Court of Appeals made the point succinctly in *Goldfinger v. Feintuch*, 276 N. Y. 281, 11 N. E. (2d) 910. In that case the union involved had unsuccessfully attempted to organize the employees of a manufacturer of kosher meat products. The union thereupon picketed a delicatessen store which sold these products, requesting the public to refrain from purchasing them at the store. The owner of the delicatessen, who himself employed union help, sought an injunction to restrain the picketing on the ground that it was a "secondary boycott." In denying the injunction the Court said:

". . . picketing may be carried on not only against the manufacturer, but against a non-union product sold by one in unity of interest with the manufacturer who is in the same business for profit.

Where a manufacturer pays less than union wages, both it and the retailers who sell its products are in a position to undersell competitors who pay the higher scale and this may result in unfair reduction of the wages of union members. Concededly the defendant union would be entitled to picket peacefully the plant of the manufacturer.

Where the manufacturer disposes of the product through retailers in unity of interest with it, unless the union may follow the product to the place where it is sold and peacefully ask the public to refrain from purchasing it, the union would be deprived of a fair and proper means of bringing its plea to the attention of the public.

We do not hold more than that where a retailer is in unity of interest with the manufacturer, the union may follow the non-union goods, and seek to persuade by peaceful picketing the consuming public to refrain from purchasing the non-union product, whether that is at the plant of the manufacturer or at the store of the retailer in the same line of business and in unity of interest with the manufacturer."

It is immaterial, of course, that the goods purchased from the "unfair" employer by a retailer may constitute a "minor part" of the retailer's business. That was no less true in the *Wohl* case than in this case. See Mr. Justice Reed's dissenting opinion in the *Ritter* case, 315 U. S. at 737-738.

The constitutional boundaries of a labor dispute, within which the rights to strike, picket and boycott may be used, can no more be drawn to exclude enterprises in unity of interest with the employer engaged in the dispute than they can be drawn to exclude employees who are not employed

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by the particular employer involved in the dispute. "The interdependence of economic interest of all engaged in the same industry has become a commonplace."

CONCLUSION

The group in power at the moment in Colorado has declared that it is unlawful for laboring men peacefully and truthfully to discuss unionization, a matter of public interest, merely because the public and fellow union members may thereby be persuaded to take action inconsistent with certain interests. Cf. *Thornhill* v. *Alabama*, 310 U. S., at 104. It has gone further. It has denied to laboring men the right to refuse to assist by their labor, both individually and in concert, the perpetuation of a system which they view as a threat to their very existence. It has denied that right because it deems the refusal of workingmen to assist in the perpetuation of non-union conditions inconsistent with its interests. Neither the Bill of Rights nor a system of free and voluntary labor can long survive in the United States if the restrictions here imposed by Colorado are permitted to stand.

At best, Colorado has here asserted that it regards self-organization by workingmen as no more than a privilege which it may grant or withhold at will and on such terms and conditions as it chooses. Colorado has asserted that the concerted refusal of workingmen to perform labor and services in an effort to improve their material conditions is subject to limitation in the interests of groups in society which are hostile to that aim. Colorado has denied to laboring men the power to appeal to the public for support in its dispute with business interests. If Colorado can constitutionally do so it can not only destroy the power of workingmen effectively to protest against conditions they regard as unfair and oppressive; it can deny that power to every social group or religious sect in

the United States whose views may not find favor with those who hold the reins of governmental power. Such subversion of the guarantees of the Bill of Rights cannot be permitted—not while the Constitution stands—"not while this Court sits."

Respectfully submitted,

J. Albert Woll,
Herbert S. Thatcher,
736 Bowen Building,
Washington 5, D. C.

Philip Hornbein,
Philip Hornbein, Jr.,
620 Symes Building,
Denver 2, Colorado,
Counsel for Appellants.